IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7505 OF 2005

Dilip Shankar Mulay ..Petitioner

Vs.

Pradeep Shankar Mulay and Ors. ..Respondents

Mr.P.R.Arjunwadkar for the petitioner

Mr.M.S.Karnik for respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 21ST NOVEMBER, 2005

P.C.:

1. The present petition challenges the impugned order dt.22.8.05 by which the court has rejected the application for exclusion of counter claim which has been filed by the defendant no.1 in the suit on record. The only ground of challenge in the present petition is that the counter claim and written statement is filed separately and not together. The learned counsel has relied upon in support of the aforesaid contention the judgment of the Apex Court in the case of Ramesh Chand Ardawatiya Vs. Anil Panjwani reported in 2003(4)Mh.L.J.579. However, in in my opinion, the

Judgement itself permits the court to accept the counter claim even if it is filed separately. The relevant portion of the aforesaid judgment reads as under.

> "There are three modes of pleading or setting up a counter claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counterclaim which in the light of Rule 1 read with Rule 6-A would be a counter claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counterclaim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counterclaim though referrable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order 6, Rule 17 of the Civil Procedure Code if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order 8, Rule 9 of the Civil Procedure Code if sought to be placed on record by way of subsequent pleading."

2. In that view of the matter, there is no substance in the matter. Petition disposed of accordingly. No order as to costs.